

REMARKS/ARGUMENTS

Applicants have received and carefully reviewed the Final Office Action mailed June 7, 2010. This paper is being filed along with a Request for Continued Examination. Claims 1, 3, 4, 6-10, 12-15, 21, 22, and 26-29 remain pending, with claim 15 previously withdrawn from consideration. Claims 1, 3, 4, 6-10, 12-14, 21, 22, and 26-29 have been rejected. Applicants respectfully traverse all adverse assertions and rejections presented in the Final Office Action. With this paper, independent claims 1 and 23 have been amended and claims 21-22 have been canceled. Favorable consideration of the above amendments and the following remarks is respectfully requested.

Claim Rejections - 35 USC § 103

Claim 23 was rejected under 35 U.S.C. §103(a) as being unpatentable over Belef et al. (U.S. Patent No. 7,169,165) in view of Wholey et al. (U.S. Publication No. 2003/0176886). Applicants respectfully traverse the rejection.

“All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). (MPEP 2143.03).

Applicants respectfully disagree with the Examiner’s assertions and comments in the body and Response to Arguments of the Final Office Action. In particular, Applicants note that the Examiner’s rejection appears predicated upon an obscure interpretation of the cited references in which the end of the shaft out of which the filtration device is deployed is considered the proximal end of the shaft. Applicants submit that one of ordinary skill in the art would not reach such a conclusion, and that this interpretation is contrary to conventional wisdom in the art. However, in the interest of advancing prosecution, and without conceding the correctness of the rejection, Applicants have amended claim 23 to further clarify the claim limitations.

The Examiner has acknowledged that Belef et al. do not disclose additional aspiration ports disposed distally of port 16 and proximally of the distal end of shaft 10, and has proposed to modify the catheter of Belef et al. using aspiration ports 114 as taught by Wholey et al. However, the Examiner still appears to rely upon an interpretation that identifies the distal end of the shaft disclosed as the proximal end of

the shaft claimed. Such an interpretation, particularly in view of the current amendments, clearly appears to be improper. As such, the catheter of Belef et al., as modified by Wholey et al. in the manner proposed in the Office Action, does not appear to disclose all of the aspiration ports are located proximally of the filtration device when the filtration device is entirely contained within the shaft lumen, nor does there appear to be a reason to arrange the elements as claimed.

Accordingly, Belef et al. in view of Wholey et al. do not appear to disclose or suggest all of the elements of independent claim 23, as is required to establish a *prima facie* rejection. Therefore, claim 23 is believed to be patentable over the cited references. Withdrawal of the rejection is respectfully requested.

Claims 1, 3, 4, 6-10, 12-14, 21, 22, and 26 were rejected under 35 U.S.C. §103(a) as being unpatentable over Belef et al. in view of Wholey et al. as applied to claim 23 above, and further in view of Tao (U.S. Patent No. 6,610,005). With this amendment, claims 21-22 have been canceled, rendering their rejection moot. After careful review, Applicants must respectfully traverse the rejection of claims 1, 3, 4, 6-10, 12-14, and 26.

For at least the reasons discussed above with respect to claim 23, Applicants submit that Belef et al. and Wholey et al. do not appear to disclose or suggest all of the elements of independent claim 1, which has been amended to include similar elements.

Furthermore, a closed end cap on the distal end of the rapid exchange catheter of Belef et al. as modified by Wholey et al. would appear to render it inoperable as a rapid exchange catheter, which requires a guidewire to enter the distal end in order to lead the catheter to the desired location within the vasculature. Therefore, the proposed modification appears to render the device unsuitable for its intended purpose (MPEP 2143.01 V). Accordingly, the combination of Tao with Belef et al. and Wholey et al. appears to be improper.

Since Belef et al. and Wholey et al., with or without the benefit of Tao, do not appear to properly disclose or suggest all of the elements of independent claim 1, as is required to establish a *prima facie* rejection, independent claim 1 is believed to be patentable over Belef et al., Wholey et al., and Tao. Since claims 3, 4, 6-10, 12-14, and 26 depend therefrom and add additional elements thereto, Applicants submit that claims

3, 4, 6-10, 12-14, and 26 are also patentable over the cited references and respectfully request that the Examiner withdraw the rejection.

Claims 27-29 were rejected under 35 U.S.C. §103(a) as being unpatentable over Belef et al. in view of Wholey et al. and Tao as applied to claim 1 above, and further in view of Hoy (U.S. Patent No. 6,705,575). After careful review, Applicants must respectfully traverse the rejection.

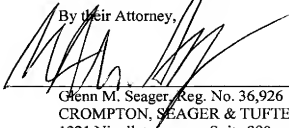
As discussed above, independent claim 1 is believed to be patentable over Belef et al., Wholey et al., and Tao. Hoy does not appear to remedy the shortcomings of Belef et al., Wholey et al., and Tao with respect to claim 1. Therefore, claim 1 is believed to be patentable over the cited combination. Since claims 27-29 depend therefrom and add additional elements thereto, Applicants submit that claims 27-29 are also patentable over the cited references and respectfully request that the Examiner withdraw the rejection.

Conclusion

In view of the foregoing, all currently pending claims are believed to be in condition for allowance. Further examination, reconsideration, and withdrawal of the rejections are respectfully requested. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,
ROBERT M. RAUKER et al.
By their Attorney,

Date: July 29, 2010



Glenn M. Seager, Reg. No. 36,926
CROMPTON, SEAGER & TUFTE, LLC
1221 Nicollet Avenue, Suite 800
Minneapolis, Minnesota 55403-2420
Tel: (612) 677-9050